

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

United States of America :  
 :  
 v. : File No. 2:99-CR-94  
 :  
 Cheryl A. Burnette :

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
(Papers 13, 14 and 18)

Defendant Cheryl Burnette seeks to vacate her criminal conviction pursuant to 28 U.S.C. § 2255. Burnette was convicted in New Hampshire federal court of wire fraud and impersonation of a federal employee. Her case has been reviewed twice in the First Circuit Court of Appeals, and remanded once by the United States Supreme Court. See United States v. Burnette, 423 F.3d 22, 23 (1<sup>st</sup> Cir. 2005) (setting forth case history).

Burnette now seeks to challenge the New Hampshire grand jury proceedings, the search of her residence and arrest in Vermont, and her Rule 40 hearing in this Court. She also claims that she was denied a speedy trial, and that her attorneys were ineffective. Her final claim is that a group of Assistant United States Attorneys committed fraud before the federal courts.

Section 2255 states that a defendant may "move the

court which imposed the sentence to vacate, set aside, or correct the sentence." Accordingly, only the sentencing court can set aside a conviction or sentence under § 2255. It is undisputed that Burnette was convicted and sentenced in the United States District Court for the District of New Hampshire. Consequently, I recommend that her § 2255 motion (Paper 13) be DENIED without prejudice for lack of jurisdiction. I further recommend that her motion for appointment of counsel (Paper 14) and motion for enlargement of time (Paper 18) be DENIED as moot.

Dated at Burlington, in the District of Vermont,  
this 25<sup>th</sup> day of October, 2007.

/s/ Jerome J. Niedermeier  
Jerome J. Niedermeier  
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).